

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5805 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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DALKU RAMDIN

Versus

CROMESHINE INDUSTRIES

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Appearance:

MR JJ YAJNIK for Petitioner

NANAVATI & NANAVATI for Respondent No. 1

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 22/10/1999

ORAL JUDGEMENT

1. Learned Advocate Mr. J.J. Yagnik is appearing on behalf of the petitioner and Learned Advocate Nanavati and Nanavati is appearing on behalf of the respondent company.

2. The facts of the present case is that ;

The petitioner workman was serving with the

respondent company since many years. The services of the petitioner was terminated on 17/3/1981 by respondent company. The said order of termination was challenged by the petitioner workman before the Labour Court, Ahmedabad, being Reference NO.184/84. Before the Labour Court, the petitioner workman has filed Statement of Claim and pointed out that before terminating the services of the petitioner neither notice was given nor departmental inquiry was held against him and no compensation was paid to him, and therefore, the order of termination is illegal.

3. Against the Statement of Claim, respondent Company has filed written statement vide Ex. 8 and deny all the allegations made by the petitioner workman. According to the respondent company, the petitioner workman was working as a helper and while working as a helper he was to sweep and all of sudden, he had stopped the work of swiping and instructions were given to him in this behalf. But no improvement was made by him in his bahaviour and therefore, show cause notice dtd. 17/3/81 was served upon him and however, during the time of his duty, he had continued his misconduct, and thereafter from 15th April, 1981, he had stopped attending to his duty. Thereafter, again on 30th April, 1981 another show cause notice was served to him, but thereafter, the petitioner workman had filed a complaint before the Labour Officer and did not turn for his duty. Before the Labour Court, the petitioner workman was examined vide Ex.4, and respondent company has also examined one Harivadan vide Ex.13. After considering the oral evidence as well as documentary evidence, the Labour Court has come to the conclusion that the workman has not proved that the company had relieved him on 17/3/81 and the petitioner workman has not proved that since the company had relieved him on 17/3/81, and therefore, he is entitled to relief of reinstatement in service with backwages for the days of lost. But considering the facts and circumstances, the Labour Court Thought it fit to grant relief of reinstatement to the workman, which is considered to be just and proper order directing to respondent company to reinstate the petitioner workman in service. The Labour Court has not granted backwages of interim period to the workman, by award dtd. 17/10/86.

4. The said award is challenged by the petitioner workman in the present petition and this petition is admitted by this Court on 13/12/90. The learned advocate Mr. Yagnik who appears on behalf of the workman has pointed out that finding recorded by the Labour Court is erroneous and requires to be quashed and set aside. It

is further submitted that not to grant backwages for the interim period, while granting reinstatement for continuity of service, amount to basic error and Mr. Yagnik has also relied upon the decision of this Court reported in 12 G.L.R. 287 and the decision of Apex Court reported in A.I.R. 1979 S.C. page 75.

5. Learned Advocate Mr. Nanavati who appears on behalf of the respondent has pointed out that the award passed by the Labour Court after considering the documentary as well as oral evidence lead before him and it is finding of fact which arrived by the Competent Court and such finding cannot be reappreciated by this Court while exercising the powers under Articles 226 and 227.

6. After considering the submissions from both the sides, the Learned Labour Court has discussed the evidence of the workman as well as evidence of the respondent company and Labour Court has also considered the documentary evidence. The Labour Court discussed the said discussion in para 9, 10, and 11 of the award in details and ultimately, the Labour Court has come to the conclusion in para 13 of the award that from the facts discussed above, it is clear that the workman has not proved that company had relieved him on 17/3/81 and workman has not proved that since the company had relieved him on 17/3/81 and he is entitled to relief of reinstatement in service with full backwages of interim period. The Labour Court has also considered the relevant facts in para 14 of the award that if the relief of reinstatement to the workman is not granted, than the company would not reinstate the workman in service, and therefore, the workman will have to face much difficulties and he is continuing service as if he goes to resume his duty and company refuse to allow him to join then again dispute will arise between the parties. Under the circumstances, the Labour Court has granted only reinstatement which found to be just and proper and also rightly deny the backwages of interim period. When the finding of the Labour Court is that the workman was not relieved from the service by the respondent Company and he himself was not reporting on his duty, though company had wrote letter to him to resume his duty, but the workman did not report on his duty. This finding of the fact arrived by the Labour Court on the basis of documentary evidence and oral evidence, therefore, according to my view, the conclusion of the Labour Court, considering the evidence on record is just, proper and reasonable. This Court cannot reappreciate the same evidence which was lead before the Labour Court because

this Court is having very limited jurisdiction and power while exercising under Articles 226 and 227 of the Constitution of India, according to the decision of Apex Court reported in 1998 (1) GLR 17 and 1998 AIR Supreme Court Weekly page 1840. Therefore, after considering the entire evidence on record, the discussion as well as reasons given by the Labour Court, the Labour Court has not committed any error while denying the backwages of the interim period because in the present case the Labour court has come to the conclusion that no termination order was passed by the respondent company, but on the contrary, the workman himself has not reported for duty, though, the respondent company had wrote a letter to the petitioner workman for reporting duty. In view of the said findings, naturally the workman is not entitled for any amount of backwages, and therefore, the two decisions which have been cited by the learned advocate Mr. Yagnik i.e. 12 G.L.R. 287 AND AIR 1979, are not applicable to the facts of the present case and therefore, no error is committed by the Labour Court and no infirmity has been pointed out by the advocate for the petitioner. In my view, this petition requires to be dismissed, and hence accordingly dismissed.

Rule is discharged. No order as to costs.

Sd/-

Date : 22/10/1999. (H.K. RATHOD, J.)

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